

SUPREME COURT OF MISSISSIPPI

Jackson Public School District v. Head ex rel. Russell

67 So. 3d 761 (Miss. 2011) · No. No. 2009-IA-02022-SCT · Decided August 11, 2011

SUMMARY

The Supreme Court of Mississippi affirmed the denial of a Mississippi Rule of Civil Procedure 41(b) motion to dismiss for failure to prosecute. The court held that although there was a record of delay, the delay was excusable, no intentional conduct or actual prejudice was shown, and lesser sanctions—including payment for reproducing discovery documents—were appropriate. The case was remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Chandler, Justice; Dickinson, P.J.; Chandler, J.; King, J.
JURISDICTION	Mississippi
DECIDED	August 11, 2011
DOCKET	No. 2009-IA-02022-SCT
DISPOSITION	affirmed_and_remanded
PROCEDURAL POSTURE	Defendants appealed by interlocutory appeal from the circuit court's denial of their Mississippi Rule of Civil Procedure 41(b) motion to dismiss for failure to prosecute.
STANDARD OF REVIEW	The Supreme Court reviews factual findings concerning dismissal for want of prosecution for manifest error and reviews the trial court's ruling for abuse of discretion.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Jackson Public School District, Marilyn Minter, Michelle King, The City of Jackson v. Latisha Head, a minor, by and through Shirley Russell, her mother and next friend, Ashley McCoy, a minor, by and through Shirley McCoy, her mother and next friend, Shirley Russell, individually

TOPICS

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PRACTICE AREAS

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether the circuit court abused its discretion by denying the defendants' Mississippi Rule of Civil Procedure 41(b) motion to dismiss for failure to prosecute.
2. Whether the circuit court properly weighed the clear record of delay, the availability of lesser sanctions, and aggravating factors including plaintiff responsibility, actual prejudice, and intentional conduct.

HOLDINGS

1. The circuit court did not abuse its discretion in denying the Rule 41(b) motion because, although there was a clear record of delay, the delay was excusable, no actual prejudice was shown, the delay was not shown to be intentional, and a lesser sanction requiring payment of discovery-reproduction costs was imposed.
2. The circuit court properly determined that requiring the plaintiffs to pay the cost of reproducing lost discovery documents was an appropriate lesser sanction and that dismissal with prejudice was not necessary.

KEY QUOTATIONS

"Dismissal for failure to prosecute pursuant to Mississippi Rule of Civil Procedure 41(b) is "reserved for the most egregious cases," due to the "extreme and harsh sanction that deprives a litigant of the opportunity to pursue his claim."" (67 So. 3d at 765)

"the mere fact that delay occurs in the prosecution of a case is not sufficient to warrant dismissal for want of prosecution. It must be clear from the record that the delay was the result of the plaintiff's failure to prosecute the claim, rather than extrinsic factors beyond the control of the plaintiff." (67 So. 3d at 766)

"AFFIRMED AND REMANDED." (67 So. 3d at 768)

FACTUAL BACKGROUND

The plaintiffs alleged that an off-duty Jackson police officer assaulted Latisha Head, a twelve-year-old student, at Watkins Elementary School and asserted negligence claims against the school district, the City of Jackson, school officials, and others. After the complaint was amended in 2005, the record showed little activity for more than three years, although defendants had served discovery requests and plaintiffs' counsel attributed the delay to illness and personal problems. Defendants asserted prejudice from faded memories, unavailable witnesses, departed school personnel, and the death of a potential expert, but the record did not establish actual prejudice or intentional delay.

PROCEDURAL HISTORY

Head and related plaintiffs filed an action in circuit court arising from an alleged incident at Watkins Elementary School and amended the complaint twice. After a lengthy period of inactivity, the defendants moved to dismiss

for failure to prosecute. The circuit court denied the motion, ordered the plaintiffs to pay the cost of reproducing lost discovery documents, and the Supreme Court of Mississippi granted interlocutory review. The Supreme Court affirmed and remanded for further proceedings.

DISPOSITION

affirmed_and_remanded

REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings consistent with the opinion.

CASES CITED

- Barry v. Reeves, 47 So. 3d 689, 693-694 (Miss. 2010)
- Watson v. Lillard, 493 So. 2d 1277, 1278-1280 (Miss. 1986)
- Hill v. Ramsey, 3 So. 3d 120, 122-123 (Miss. 2009)
- Hillman v. Weatherly, 14 So. 3d 721, 726, 728 (Miss. 2009)
- Wallace v. Jones, 572 So. 2d 371, 376-377 (Miss. 1990)
- Am. Tel. & Tel. Co. v. Days Inn of Winona, 720 So. 2d 178, 180-182 (Miss. 1998)
- Rogers v. Kroger Co., 669 F.2d 317, 320, 322 n. 7 (5th Cir. 1982)
- Cox v. Cox, 976 So. 2d 869, 874, 876, 879 (Miss. 2008)
- Ill. Cent. R.R. Co. v. Moore, 994 So. 2d 723, 725, 729 (Miss. 2008)